

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

EDWARD LEROY MILNER,

Case No. 14-CV-3079 (PJS/HB)

Plaintiff,

v.

ORDER

TOM ROY; MICHELLE SMITH; LT. BOB
PLUMM; SUE ARMSTRONG; LISA
OLSON; MARY McCOMB; CHERYL
COLE; RICHARD NEURER; COLL
DUFFY; and NACOLE LIND,

Defendants.

Edward Leroy Milner, pro se.

This matter is before the Court on the motion of plaintiff Edward Milner for leave to appeal *in forma pauperis* (“IFP”). Milner’s motion is granted, and the initial partial filing fee is waived. Milner will be required, however, to pay the full filing fee in installments.

Because Milner is a “prisoner,” *see* 28 U.S.C. § 1915(h), the \$505 filing fee for his appeal cannot be waived altogether. 28 U.S.C. § 1915(b); *Henderson v. Norris*, 129 F.3d 481, 483-84 (8th Cir. 1997) (per curiam). Instead, an order granting IFP status to a prisoner-appellant merely permits him to pay the filing fee for his appeal in installments, rather than all in advance. *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997). A prisoner is required to pay an “initial partial filing fee” upon the commencement of an action or appeal, and he is required to pay the remaining balance of the fee through periodic deductions from his prison trust account. 28 U.S.C. § 1915(b). If the prisoner has no assets and no means to pay the initial partial fee, however, the entire fee is collected according to the installment plan in § 1915(b)(2). *Henderson*, 129 F.3d at 483-84.

Based on the disclosures in Milner's IFP application, the Court finds that Milner is financially eligible for IFP status. Because Milner currently has no assets and no income, the initial partial filing fee is waived in accordance with 28 U.S.C. § 1915(b)(4). Instead, Milner will be required to pay the entire fee in installments in accordance with 28 U.S.C. § 1915(b)(2).

The Court remains satisfied that Milner's lawsuit was properly dismissed and that he has no meritorious grounds for an appeal. But the Court will not deem Milner's appeal to be "frivolous" as that term has been defined by the Supreme Court. Therefore, Milner's appeal is found to be taken "in good faith" for purposes of 28 U.S.C. § 1915(a)(3).

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for leave to appeal *in forma pauperis* [ECF No. 12] is GRANTED.
2. The entire \$505 filing fee must be paid over time in accordance with 28 U.S.C. § 1915(b)(2).
3. A copy of this order shall be sent to plaintiff and to prison officials at the institution where plaintiff is currently confined.

Dated: November 13, 2014

s/Patrick J. Schiltz

Patrick J. Schiltz
United States District Judge